DOCUMENT RESUME

ED 429 416 EC 307 164

AUTHOR Ahearn, Eileen M.
TITLE Charter Schools and Special Education: A Report on State Policies. Project FORUM Final Report, Deliverable #1-3.2.
INSTITUTION National Association of State Directors of Special Education, Alexandria, VA.
SPONS AGENCY Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE 1999-03-00
NOTE 35p.
CONTRACT H159K70002
AVAILABLE FROM Project FORUM, National Association of State Directors of Special Education, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314.
PUB TYPE Reports - Research (143)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Admission Criteria; *Admission (School); *Charter Schools; *Disabilities; Educational Legislation; Elementary Secondary Education; Federal Legislation; Financial Support; National Surveys; Policy Formation; School Districts; *Special Education; *State Regulation; Student Rights; Supervision

ABSTRACT

This report reviews state policy documents, other than state laws, that pertain to students with disabilities in charter schools. It includes background information on charter schools in general and relevant federal legislation, a report of a survey on state policy documents, and a discussion of four areas of critical issues related to this topic. The survey was conducted in the spring of 1998. It revealed that about half of the states reported having no written policy document relating to students with disabilities in charter schools. In addition, it is apparent that little, if any, thought was given to conflicts between charter school statues and existing special education requirements prior to the passage of any state's legislation allowing for the establishment of charter schools within the public education system. The major areas of policy identified and discussed are: (1) the meaning and implications of a charter school's status as a local education agency; (2) the monitoring of charter schools for compliance with special education requirements; (3) funding for students with disabilities in charter schools; and (4) the interface between special education requirements and charter school admission policies. This document also contains two appendices--a summary of existing state charter school regulations and a list of the state policy materials used in the study--and 13 references. (Author/CR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

15854

ED 429 416

Charter Schools and Special Education:

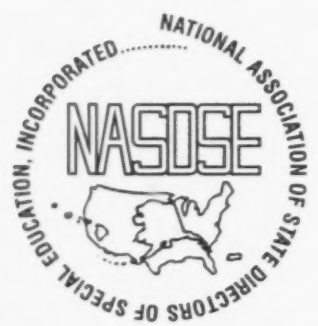
A Report on State Policies

by
Eileen M. Ahearn, Ph.D.

Prepared by:
Project FORUM
National Association of State Directors of Special Education
1800 Diagonal Road, Suite 320
Alexandria, VA 22314

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
✓ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY
M. Fields
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
1



Prepared for:
Office of Special Education Programs
U.S. Department of Education

Final Report
Deliverable #1-3.2
Under Cooperative Agreement No. H159K70002
March, 1999

EC 307164

BEST COPY AVAILABLE

Project FORUM at National Association of State Directors of Special Education (NASDSE) is a cooperative agreement funded by the Office of Special Education Programs of the U. S. Department of Education. The project carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback, and develop conceptual frameworks related to critical topics in special education.

This report was supported in whole or in part by the U.S. Department of Education (Cooperative Agreement No. H159K70002). However, the opinions expressed herein, including summaries or conclusions regarding state law or policy, do not necessarily reflect the position or policy of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

ACKNOWLEDGMENTS

Project FORUM extends its sincere appreciation to the individuals whose efforts have served to enrich the quality and accuracy of this document. The individuals listed below, who constituted a Quality Review Panel for this work, have reviewed and commented on an earlier draft of this document. Our acknowledgment of their involvement does not necessarily indicate their endorsement of this final document.

Judith Anderson, United States Department of Education, Office of Educational Research and Improvement, National Institute on Student Achievement, Curriculum, and Assessment

David Berkowitz, Office for Civil Rights, U. S. Department of Education

Elizabeth Cooley, Director of Special Education Projects, WestEd

Tom Fiore, Center for Research in Education, Research Triangle Institute

Kay Lund, State Director, Exceptional Student Services, Arizona Department of Education

Document submitted September 4, 1998

TABLE OF CONTENTS

ABSTRACT ii

INTRODUCTION 1

BACKGROUND

Overview of Charter Schools 2

Federal Disability Legislation and Charter Schools 3
Individuals with Disabilities Education Act 3
Section 504 of the Rehabilitation Act 4

METHODOLOGY 5

STATE CHARTER SCHOOL POLICY DOCUMENTS 5

Formal Rules and Regulations
Adding Charter Schools to Special Education Regulations 5
Adding Special Education to Charter School Regulations 6
Separate Regulations for Special Education in Charter Schools 6

Other Types of State Documents 7

CRITICAL ISSUES 8

LEA Status 9
Funding of Special Education in Charter Schools 10
Admissions Policies of Charter Schools 11
Compliance Monitoring in Charter Schools 13

CONCLUSIONS AND RECOMMENDATIONS 14

REFERENCES 15

APPENDIX A: Summary of State Charter Schools Regulations

APPENDIX B: List of State Policy Documents

APPENDIX C: Excerpts from IDEA

ABSTRACT

This report is a review of state policy documents, other than state laws, as they pertain to students with disabilities in charter schools. It includes a background on charter schools in general and relevant federal legislation, a report of a survey on state policy documents conducted in , and a discussion of four areas of critical issues related to this topic. The survey was conducted in the spring of 1998 and a draft of the relevant portions of this report were reviewed by state personnel in July 1998. The report was submitted to the U. S. Department of Education, Office of Special Education Programs (OSEP) on September 4, 1998.

This study revealed that about half the states reported having no written policy documents relating to students with disabilities in charter schools. In addition, it is apparent that little, if any, thought was given to conflicts between charter school statutes and existing special education requirements prior to the passage of any state's legislation allowing for the establishment of this new entity within the public education system.

The major areas of policy identified and discussed are: 1) the meaning and implications of a charter school's status as a local education agency; 2) the monitoring of charter schools for compliance with special education requirements; 3) funding for students with disabilities in charter schools; and, 4) the interface between special education requirements and charter schools admission policies.

The document also contains two appendices: a summary of existing state charter school regulations, and a list of the state policy materials used in the study.

Charter Schools and Special Education: A Report on State Policies

INTRODUCTION

Charter schools, high profile components of the current educational reform movement, are a relatively new addition to public education systems in more than 30 states. They are difficult to define because they differ greatly from state to state, and even within states. Although charter schools are granted waivers from some or all state requirements and are often described as "autonomous" or "free from rules and regulations," such characterizations may be misleading. Charter schools, as public schools, are subject to federal civil rights laws. They must comply with federal requirements relevant to serving students with disabilities, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990.

Since the first charter school law was passed in Minnesota in 1991, there have been many analyses of the content of the state laws that govern the establishment and conduct of charter schools, the most recent of which was completed as part of a Department of Education funded contract (Fiore, 1998). These studies have found that state laws regarding charter schools contain few specific references to students with disabilities except for a prohibition against discrimination, although some of the laws' provisions do have direct impact on the delivery of special education in charter schools.

In addition to the enabling legislation, some states have established operational guidelines in the form of charter school rules, regulations, changes in existing sets of rules or regulations, or other policy documents that address the implementation and conduct of programs and services for students in charter schools who are eligible for special education under IDEA. Those policy documents constitute the main data for this report. After a background on charter schools in general and relevant federal legislation, this report contains a discussion of state policy documents as they pertain to students with disabilities in charter schools. Then, four major areas of critical issues related to this topic are discussed, followed by conclusions concerning the need for additional policy development and clarification.

This document does not contain a discussion of state charter school laws. Rather, it is intended to be used in conjunction with such statutory analyses to provide a more complete picture of current state policy concerning special education in charter schools.

BACKGROUND

Overview of Charter Schools[1]

Charter schools can be viewed as an instance of *devolution* of governance—the movement of responsibility and control to lower and smaller levels of a bureaucratic/governmental structure. Generally, a charter school is established when an individual or group petitions, and is granted, a charter by a designated state or local entity to establish a school that is at the same time separate from, and a part of, the public school system.

The range of options available for general education elementary and secondary schooling in the United States today falls along a spectrum. Charter schools involve one form of *choice* along that gamut of publicly financed education that ranges from the traditional student placement decided by school staff in the district in which a family resides, to the unlimited options available when parents receive a voucher for a placement in any public or private school. Public charter schools vary across states in the degree of attachment they have to local districts and in the area from which they will draw students, but they all involve the exercise of choice by parents as a condition of admission.

The term *charter* has also been applied to other types of structures within education. For example, in Philadelphia, the term "charter" is also used for a grouping strategy somewhat like a "school-within-a-school," started in 1988 and recently expanded within that school district as part of a systemic change plan (Klonsky, 1996). However, in this report, the term *charter school* [2]refers only to the public or governmental entities created under state laws to exist as autonomous school districts or separate components within existing school districts, and does not include other variations.

As of August 1998, a total of 33 states and the District of Columbia have adopted charter school legislation, although nine (9) of these states did not have operating charter schools as of the end of the1997-98 school year. The extreme variation in state charter schools laws and other related policies makes state location the primary factor in any discussion of charter schools. However, federal charter school legislation, 20 U.S.C. §§8061-8066, a discretionary grant program that provides federal funds for the initial development and implementation of charter schools through states and other entities, does impose certain federal requirements upon charter schools that are participants. In addition, all states participate in and receive federal funds through the IDEA, therefore public charter schools are subject to the relevant federal requirements pertaining to children with disabilities.

---

[1]More detailed information on the topic can be found in the book by Joe Nathan listed under References. Given the dynamic nature of the charter schools movement, statistics are out of date almost as soon as they are published. Data are currently maintained by a variety of sources other than print media: the internet sites of the Center for Education Reform (www.edreform.com) and the US Charter Schools (www.uscharterschools.org)are two sources that are regularly updated.

[2]Two states use a different term for charter schools: Michigan calls them *public school academies*, and Ohio uses the title *community schools*, but they will be referred to as charter schools in this report for purposes of consistency.

Federal Disability Legislation and Charter Schools[3]

Although states provide varying degrees of autonomy by excusing charter schools from some or all of their own laws and regulations, states may not waive the provisions of any federal statute or regulation. Pertinent to this report, the most relevant examples of federal requirements that charter school operators must follow are the IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

Individuals with Disabilities Education Act[4]

Federal special education law, P. L. 94-142 (Education of the Handicapped Act of 1975, since renamed the Individuals with Disabilities Education Act or IDEA) guarantees that a free, appropriate public education (FAPE) is made available to students with disabilities and provides funding to assist states to implement its requirements. The law was most recently amended in 1997 and, at the time of this writing, its regulations are also being revised. Together, the law and regulations describe the components of FAPE: evaluation of a student referred for a suspected disability, the determination of eligibility for special education, and other relevant requirements. Once a student is found to be a "student with a disability," an individualized education program (IEP) is developed that details the student's present performance levels, annual goals and short-term objectives or benchmarks, the special education and related services to be provided to that student, and other required components. There are also other IDEA requirements such as parental notice, consent, and involvement, due process rights, and special procedures governing suspension and expulsion of students with disabilities.

The 1997 amendments to IDEA include specific provisions related to charter schools. (Appendix C contains a copy of those sections.) Briefly, IDEA now requires states and local education agencies (LEAs) to ensure that students with disabilities attending charter schools will be served in the same manner as any other child with a disability in any other type of public school. As will be discussed below, the status of a charter school as "an independent LEA" or a member school of an existing LEA is a critical factor for charter schools' implementation of IDEA requirements.

---

[3]For a more complete discussion of IDEA prior to the 1997 Amendments as it pertains to charter schools, see *Charter Schools and Special Education: A Handbook* available through the website <www.uscharterschools.org> or in hard copy from NASDSE.

[4]Although the United States Department of Education, Office of Special Education (OSEP) has not issued a formal interpretation of IDEA in charter schools, it has approved for dissemination an edited transcript of remarks made by Thomas Hehir, OSEP Director, to the participants at the First National Charter Schools Conference in November 1998. It is available on U. S. Charterschools website noted above.

Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act[5]

Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) are federal civil rights laws that protect individuals from discrimination on the basis of disability. Section 504 protects students and other participants from discrimination on the basis of disability in programs and activities that receive federal financial assistance. Title II of the ADA prohibits discrimination on the basis of disability by public entities, including public charter schools and public school districts, regardless of whether they receive federal financial assistance.

The provisions of Section 504 and Title II are more extensive than the IDEA in the types of disabilities that they cover and the class of individuals that they protect. IDEA eligibility depends on whether a student with a disability requires special education, defined as "specially designed instruction." Students who meet IDEA eligibility requirements are also protected by Section 504 and Title II. But, in rare instances, some students with disabilities such as orthopedic disabilities could be covered by Section 504 and Title II, but not necessarily by the IDEA; these students may be ineligible for special education and related services under the IDEA, but could still be protected by Section 504 and Title II.

The regulations under Section 504 require the provision of FAPE— that is, regular or special education and related aids and services—with non-disabled students, to the maximum extent appropriate to the needs of the student with a disability. Though not required by Section 504, one way of meeting the Section 504 requirements is through an IEP developed in accordance with the IDEA. Public charter schools need to make sure they have in place procedures to ensure that students covered by Section 504 and Title II, but not by the IDEA, receive FAPE as defined and required under those laws.

For charter schools that were pre-existing public schools and converted to charter status, special education programs and services generally are already a part of the structure. Adherence to special education requirements is made easier since specialized staff are usually in place, and there is prior experience with meeting the needs of students with disabilities. However, over half of the existing charter schools are newly created by individuals or groups, and programs must be designed from scratch (RPP International, 1997). There is a critical need for the development of these schools' capacity to meet the obligation to appropriately serve students with disabilities.

---

[5]The U.S. Department of Education's Office for Civil rights has distributed a draft Questions and Answers document on the application of the federal civil rights laws to public charter schools. This draft document includes information on Section 504 and Title II. This document is available on the US Charter Schools website at the following address: www.uscharterschools.org/res_dir/res_primary/ocr_q&a.htm.

METHODOLOGY

To obtain the data for this report, a request was made of every State Director of Special Education in the spring of 1998 to provide any regulations or other policy-related written materials concerning the education of students with disabilities in charter schools. Some state officials were contacted by telephone for clarifications, and contacts were also made with a variety of charter-related organizations. In addition, the contents of every state's website were reviewed for relevant information. In July 1998, sections of the draft report pertaining to specific states were reviewed by state personnel. Appendix B contains a list of the documents provided by the states and reviewed for this report, and the internet address of their internet site if it contained any references to charter schools.

In the first section of this report, state-level materials are summarized by form and type, with reference to the major policy issues impacting special education in charter schools that states have addressed through regulation. Second, other types of guidance or information provided by states are described. This report concludes with a discussion of some areas of policy issues that appear to need further clarification or regulation at the state level to ensure the appropriate inclusion of students with disabilities in charter schools.

STATE CHARTER SCHOOL POLICY DOCUMENTS

Formal Rules and Regulations

State statutes constitute the most significant tool of state educational policy. Next in significance are the formal rules and regulations that are adopted by a Board of Education to implement one or more laws. Generally, such formal requirements have the force of law within the state that adopts them.

As a general rule, a state has three major options to manage the delivery of special education services in charter schools: 1) it could add to or revise its existing special education regulations; 2) it could adopt specific provisions in its regulations for implementing charter school legislation: or, 3) it could enact specific rules concerning students with disabilities in charter schools as a separate set of targeted regulations. The results of this study revealed that only a few states have taken any regulatory action specific to students with disabilities in charter schools, opting to use other policy tools to advise and guide in this area.

1) Adding Charter Schools to Special Education Regulations

Every state has enacted laws and regulations governing the provision of special education in schools, but only one state—Colorado—has amended its special education regulations to add references to charter schools. Some states grant exemptions to charter schools from their own laws and regulations including those for special education but, as already mentioned, that type of waiver can apply only to those provisions of state requirements that are not required by or go beyond the

federal laws and regulations. For example, federal regulations define the term "emotional disturbance" and provide general guidelines for all evaluations, but do not prescribe specific tests or evaluation materials or techniques for diagnosing or determining the existence of an emotional disturbance. If a state's regulations do prescribe a standard for evaluating this disability, an exemption form the state's regulation and policies would allow a charter school to utilize its own tests and techniques, as long as they are valid and meet the relevant federal requirements regarding evaluations.

The additions Colorado made to its special education regulations refer to the assignment of responsibility for special education costs for students attending charter schools. Specifically, even if a child attends a charter school located in another district, the district of residence of the parents or legal guardian is responsible for paying the charter school for special education services over and above applicable revenues. No written approval for the placement is required from the district of residence. However, the charter school must follow the guidelines and forms developed by the state to determine what rates they are able to charge for their special education program. Rates do not have to be approved by the Department of Education. The district where the child attends school counts the child for both state and federal funds. Colorado does not have a separate set of regulations for charter schools.

2) Adding Special Education to Charter School Regulations

Very few states have adopted rules or regulations specifically for charter schools. This study found that only six (6) of the 33 states that have charter school laws have adopted rules/regulations implementing those laws. The regulations reviewed for this study do not contain any reference to students with disabilities, nor do they contain any provisions concerning the implementation of special education programs and services in charter schools. A brief description of each of the six state charter school regulations is contained in Appendix A.

3) Separate Regulations for Special Education in Charter Schools

One state—Pennsylvania—has drafted a set of regulations specific to special education in charter schools, but they are not official and are for discussion only. The proposed regulations, that are going through a regulatory adoption process, specify how the state, through the Department of Education, will ensure that charter schools comply with federal laws and regulations governing students with disabilities, including IDEA and Section 504. One provision explains the manner in which a charter school may limit enrollment in compliance with those federal laws. According to SEA personnel, a series of three public hearings /round table meetings were held in June 1998 to discuss the proposed regulations and gather comments from charter schools, parents, advocates, and school districts. The bureau of Special Education has also held a series of workshops on special education requirements for charter schools, and has assigned a compliance advisor who works with charter schools and serves as liaison officer with the Charter Schools Office.

Other Types of State Documents

States with charter school laws have developed a variety of documents to provide information to developers and the general public. About half of them, however, reported having no written policy documents relating to students with disabilities in charter schools. (See table in Appendix B)

The most common way that states communicate information about charter schools is through an information packet that is usually targeted to potential charter school developers. This is often the only place that any information is provided about special education in charter schools. At a minimum, these packets contain application forms, a copy of state law and regulations, and instructions. Some state information packets also contain information sheets about the inclusion of students with disabilities in charter schools. For example, Delaware provides a charter school guidebook that contains a section that addresses major program/service components for children with disabilities. Specific items discussed include federal laws, child find, child count, application for funding, monitoring, requirements for personnel development, related services, and the state's early childhood assistance program.

Arizona, the state with the largest number of charter schools, has developed the most extensive documents and procedures related to students with disabilities in charter schools. *The Special Education Process: A Model for Charter Schools* is a manual that contains all the forms used in the special education program, with detailed explanations in English and Spanish. The State Special Education Department assigns a contact person to each charter school to provide technical assistance. Since charter schools in Arizona are independent school districts (further explained below), they are required to submit the same *Consolidated Entitlement Application* to qualify for receiving funds under IDEA as all other districts. The information that must be provided includes a detailed budget, and responses to sets of items concerning IDEA requirements such as child identification, individual educational programs (IEPs), the kind and number of facilities for delivering services to students with disabilities, the number and types of teachers and other personnel employed in special education, the school's comprehensive system of personnel development, and parental involvement. Special education staff from the Department of Education assist with the completion of the forms, and support the charter school staff in the handling of other issues related to students with disabilities.

Although there are currently no formal written policies for Minnesota's charter schools, the state has developed a unique form of technical assistance for charter schools by funding a position, Director of Special Education for Charter Schools, at the Minnesota Association of Charter Schools. The Association developed materials in the past that were not official state policy, but the newly appointed director is in the process of developing a special education section for a document on charter schools that will constitute a state manual.

The Pennsylvania Department of Education has published a *Basic Education Circular*, an official document of state policy, that interprets some aspects of the state's charter school law. It includes reference to a charter schools' responsibility for providing special education as a separate

LEA, and provides brief details about funding and expenditures for special education students; however, it is mainly designed to provide clarification on other points in the charter school law.

The Pennsylvania Bureau of Special Education has also issued *Preliminary Guidance for Charter Schools Regarding Special Education*, on the special education implications of the state's charter school law. It notes six specific points in the law about special education that cover non-discrimination in admissions, the obligation to provide services when students with disabilities are admitted, the availability of options for arranging to provide special education services, and the relationship between the charter school and the student's district of residence. Brief summaries of the major requirements of IDEA and other federal statutes are included. This document concludes with a note about the administration of special education and encourages charter schools to contract for the services of a certified special education administrator to oversee this area. A list of questions and answers on seven critical issues is also attached.

In California, most charter schools are not independent local educational agencies, and special education is provided in concert with proximate local educational agencies. An explanation of special education apportionments is contained in the Department of Education's information packet. The California charter school law states that special education apportionments that would be made to a district are to be made to the charter school for each pupil who is entitled to special education services. However, state procedures provide for calculating of special education funds based on enrollment for Special Education Local Plan Areas (SELPAs), with each one covering a designated geographical area. Further complications for special education funding occur because charter schools accept students whose district of residence is part of a SELPA that is different from the one that serves the charter school. Policy to solve this and other related complications is currently being developed as official advice to districts. Funding issues in other states are discussed more fully later in this document.[6]

Every state department of education maintains a website, and many contain information about charter schools in the from of frequently-asked question (FAQ) documents. Some of these address special education, but the information provided to date has been minimal and, at this time, the internet is not a comprehensive source for information on state policy for students with disabilities in charter schools.

CRITICAL ISSUES

A review of charter school legislation suggests that there was little if any thought given to conflicts between statutes that establish this new type of public school and any other existing legal requirements. It appears that the pre-existing mandates contained in federal disability law were not analyzed in relation to the new entity states created to implement deregulation. In their rush to increase choice within the public education system and to free schools from any outside regulation, state lawmakers appear to have neglected to address the impact of unavoidable limitations to their

[6]After the survey covered in this report, California passed an amendment to its charter school law and regulations are being developed that will most likely revise funding procedures, including those for special education.

freedom to grant waivers from federal laws and regulations to charter schools. One example of this problem involves the implementation of special education in charter schools.

Complicated policy dilemmas continue to frustrate charter school operators and others who seek solutions to the successful interaction between charter schools and special education requirements. Policy issues that seem to be most in need of analysis at this time include the LEA status of the charter school, funding, admissions policies, and compliance monitoring. The remainder of this report is a brief review of these issues.

LEA Status

The most important defining element for a charter school in regard to its special education obligations is its legal status within the public educational system. Charter schools range from fully independent LEAs at one extreme, to integral components of existing LEAs at the other. Since the control of charter schools remains at the state level, federal agencies generally accept the state designation of its charter schools as LEAs or components of existing LEAs. The pertinent part of Section 602 of IDEA defines an LEA as follows:

(15) LOCAL EDUCATIONAL AGENCY-

(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes --

(i) an educational service agency, as defined in paragraph (4); and

(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school...

The picture of charter schools vis a vis their LEA status is a patchwork quilt, with no two squares exactly the same. The range of options is as follows:

- In some states, charter schools are part of the local education agency (LEA), and their status is equivalent to all other schools within that district, although with some degree of autonomy in areas such as curriculum or staffing.
- In other states, a charter school is financially and legally independent from a school district and constitutes a separate LEA in and of itself.
- At yet another point along the continuum, some states allow both types of governance or leave this issue in whole or part to either: 1) the type of charter or the chartering agency as in Texas where the law allows three different varieties of chartering, or 2) a negotiation between the charter schools and the local district in which it is located, e.g., Florida.
- Some have mixed structure where the charter school must choose its status for particular aspects of its operation. For example, charter schools in the District of Columbia (DC) must make a status decision only for purposes of IDEA and Section

504. Section 2201(19) of the DC law provides that each charter petition shall contain "a statement of whether the proposed school elects to be treated as a local educational agency or a District of Columbia public school for purposes of Part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and notwithstanding any other provision of law, the eligible chartering authority shall not have the authority to approve or disapprove such election." Officials of the D.C. Public Schools advise that they are in the process of developing a policy statement that will clarify the implications of this choice of status for charter schools.

- Finally, some states provide arrangements for payment of costs or service delivery by the home district for students who attend the charter school, alleviating the cost obligations for charter schools that are basically independent LEAs. Funding issues are further discussed below.

Traditionally, an LEA has been viewed as the administrative agency for all the school-age children who live within its geographic boundaries. However, there is a basic lack of clarity in the definition of an LEA that has not yet been debated: does the concept of an LEA necessarily incorporate a defined geographical area? In some states, intermediate or regional districts are additional types of LEAs but, as a general rule, they include attachment to a prescribed geographic location. In relation to charter schools, many questions remain: If location is a defining characteristic of a separate LEA, what does the term mean when it is applied to charter schools, many of which are not limited to a geographic area in accepting students? Is there a need for another term to denote an independent public charter school?

The status of charter schools also impacts on issues of control in various aspects of operation. For example, if a charter school that is part of an existing LEA has a particular mission, such as a college preparatory academic curriculum, can the LEA require that lower level courses be added to accommodate specific students? To what degree can a charter school with such a mission approved in its charter agreement be required to change its program to serve students with cognitive disabilities? Can issues such as this be successfully resolved through negotiations between the charter school and its sponsoring district?

In the absence of clarification of this point, dilemmas will continue to arise when the ultimate responsibility for specific students is in question. A clear interpretation of the meaning of "LEA status" would help provide answers to some lingering problems concerning admission, funding and other obligations of charter schools.

Funding of Special Education in Charter Schools

As mentioned in the section on IDEA at the beginning of this document, the 1997 amendments to the federal special education statute require that a state "serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools," and "provides funds under this part to those schools in the same manner as it provides those funds to its other schools" (See Appendix C). Charter schools that are independent LEAs may apply to their

state for IDEA funds, and states are required to include those charter schools that are eligible LEAs in the distribution of those federal funds. In turn, those charter schools must meet all federal and state eligibility requirements of a local district. These obligations have profound consequences for many aspects of charter school operations that are carried out at the district level for traditional schools including staffing, the identification of students with disabilities and, most notably, costs.

The essential cost factor that is influenced by LEA status is the charter school's responsibility for programs and services for students with disabilities as prescribed on their IEPs. An LEA must bear the cost for any student whose IEP requires placement in a day or residential placement. As Heubert (1997, p. 320) discusses extensively, this obligation can be borne more easily by most traditional school districts than by an individual charter school that constitutes an independent district. Most traditional districts are larger than a single autonomous charter schools and have other resources to access, such as larger budgets that can be revised to pay for costly placements, or the raising of additional tax revenue. Similar to the few small, one-school type of districts, charter schools that are independent LEAs have very limited capacity to absorb unanticipated expenses and can go out of business as a result of funding problems. In cases where charter schools close down, the LEA of residence would be responsible for readmitting its students. Small traditional school districts may face similar funding problems, but they are more likely to find a solution that would continue to provide access to education for its students because of the ability to access funds.

There are two examples of state policies to counteract the burden that special education costs impose on charter schools. Specific to the issue of placements in private settings, the Massachusetts law provides that districts of residence must assume the costs for a charter school student whose IEP team recommends day or residential placement. In Minnesota, although charter schools are independent LEAs that must follow all the requirements of any LEA in the state, charter schools bill back to the district of residence for all special education costs in excess of the revenues received for the student. The only costs not reimbursable to Minnesota charter schools are those from dispute resolution unless the district of residence placed the child into the charter school. In addition, some states have adopted policies to protect the needs of students with disabilities. For example, Florida's information materials contain a statement that the ultimate responsibility for meeting the needs of students with disabilities rests with the local school boards.

Admissions Policies of Charter Schools

As noted above, the U.S. Department of Education's Office for Civil Rights has distributed a draft Questions and Answers document on the application of the federal civil rights laws to public charter schools. This draft document addresses program accessibility, the provision of FAPE (free appropriate public education), and recruitment and admissions.

Conditions for the acceptance of students with disabilities by a charter school is a complicated subject, and a full discussion is beyond the scope of this paper. However, the basic principle of applicability of federal and state civil rights and special education laws to charter schools makes it clear that a blanket denial of admission of students with disabilities is not possible. The main issue involves the distinctive nature of the programs in most charter schools and the right of students with

disabilities to receive equal consideration for admission. Materials from Alaska include a statement that charter schools can serve "students who will benefit from a particular teaching method or curriculum," but care is advised in disallowing admissions of students with disabilities because of the potential for violating civil rights laws on discrimination.

As in other areas, state laws on charter schools vary in the admissions requirements they have adopted for charter schools. Whether or not it is explicitly prescribed, every state must ensure that charter schools are non-discriminatory in accordance with federal laws and regulations. This, of course, includes avoiding discrimination in the admission of students with disabilities. In addition to this general caveat, states have defined a number of charter school characteristics that directly affect admissions. For example, some states define eligible students as those who reside in the district where the charter school is located; others allow admission from any area of the state regardless of district boundaries. This can pose problems for existing funding mechanisms, as in the case of California where special education funding is tied to an interdistrict structure as described above on page 8. Also, some states require that any charter school receiving more applications than it can accommodate use a random selection process, such as a lottery, in which every applicant has an equal chance of being chosen to make admissions decisions. A lottery is also a prerequisite for a state's eligibility for federal funds for charter schools [20 U.S.C, § 8066].

The topic of charter school admissions is treated extensively in the article by Heubert (1997). One point he makes is the similarity between the principles of non-discriminatory admissions as they have been addressed in relation to the magnet school context, and admissions issues that have been raised about charter schools. It is his opinion that principles that have been established for magnet schools are indicative of standards that would apply to charter schools. One such principle holds that "the range of choice provided to students with disabilities must be comparable to that offered to other students" (p. 332).

If an IEP team considers a charter school for a student with a disability, effective planning would dictate that staff from the charter school be involved in that process. If the student is admitted, the charter school is obliged by law to implement the IEP as any other school receiving a transferring student, or arrange for a review or re-evaluation to consider revisions to the plan.

There remain unresolved issues regarding the placement requirements under the IDEA and giving parents choices for placing their child in settings such as charter schools. Under existing IDEA regulations,[7] placement decisions must: be made at least annually; be based upon the IEP; be as close as possible to a child's home; and, unless required by the IEP, be at the school the child would attend if not disabled. Under the 1997 IDEA Amendments, the parent must be a member of any group that makes the placement decisions. Under many parental choice programs, including some charter school programs, it is the parent who chooses or applies to the school that they want their child to attend.

[7]The proposed regulations incorporating the 1997 Amendments to the IDEA contain similar provisions.

In the context of school choice programs, the U. S. Department of Education previously stated that, where state law allows parental choice in the LEA responsible for providing FAPE, a parent is free to choose between two or more LEAs that can provide FAPE (Letter to Evans, 1991, 17 *EHLR* 836). In situations where school choice is not between LEAs, parental choice is permissible so long as the public agency determines that the placement selected by the parent would provide FAPE and meets all other IDEA requirements (Letter to Siegel, 1990, 16 *EHLR* 797). These positions may be the basis for future guidance, but given the new provisions in the 1997 IDEA Amendments and the recent Charter Schools Expansion Act, charter school placement issues may need to be explored further.

Compliance Monitoring in Charter Schools

Since the passage of IDEA in 1975, the U.S. Department of Education, Office of Special Education Programs (OSEP) has conducted a structured monitoring process relative to state implementation of federal special education laws. OSEP is currently in the process of revising these procedures. The changes are intended to allow for more targeted monitoring of those requirements most closely connected to improved results for students with disabilities, and to improve its partnership relationship with the states in the monitoring process. Compliance monitoring now involves a number of components, including a self-study by the state, document review and periodic site visits by OSEP staff individually designed to verify each state's implementation of special education requirements. Similarly, each state is required to oversee the implementation of special education laws and regulations in any school or agency that provides educational services within the state. To fulfill this obligation, states have developed procedures that are very similar to the federal process to meet their obligations for monitoring the compliance of school districts and other service providers with federal and state requirements (Ahearn, 1998). By definition, this monitoring must include charter schools.

In responding to the request for information for this study, some states included information on their monitoring plans and activities for charter schools as follows:

- With a total of 246 charter schools as of the end of the 1997-98 school year, each operating as an independent LEA, Arizona faces a formidable monitoring task. SEA staff report that they are scheduling charter schools for monitoring on the same basis as other LEAs—approximately one-third are reviewed annually.
- By contrast, New Mexico, where charter schools are part of the LEA, there are only five (5) charter schools, and one does not have any students with disabilities. Three (3) schools were visited as part of the state's accreditation process during the past school year, and copies of the resulting reports were included in the materials provided for this report. Special education was reviewed as a major component of the accreditation process. No areas of non-compliance were documented in reports, although suggestions for program improvement were made in the "Professional Comments and Recommendations" section.

It has been noted by some state personnel that the obligation to monitor charter schools increases their workload at the same time that downsizing of state departments of education is causing reduction in the number of state personnel.

CONCLUSIONS AND RECOMMENDATIONS

The charter school movement is a very new and rapidly changing component of the public education system, and there is an urgent need for further analysis and policy development in many areas. In most instances, the tremendous variation in charter school laws from state to state would preclude the use of generalized explanations and instructions. However, the lack of intensive analysis of the implications of various policy decisions complicates the development of any solutions to current dilemmas. Thus, there are some areas that appear to warrant further investigation as soon as possible:

First, a review of the meaning and implications of a charter school's status as an LEA is critical. There are legal and operational ramifications of this issue for the education of students with disabilities that are complex and may be difficult to understand.

Second, there is a need for states with charter schools to review their monitoring programs and to exchange information for mutual assistance.

Third, there are continuing concerns about funding in some states. The U. S. General Accounting Office completed a series of reports on charter school access to federal special education funds (1997, 1998), concluding that federal funds are being accessed by charter schools, but there are continuing problems. However, there has been no known in-depth analysis of the flow of state funds for students with disabilities. Additional clarification is needed on many policy issues related to funding.

Fourth, the interface between special education requirements and charter school admissions policies seems unclear and further exploration of the relationship is needed.

The growth of charter schools appears to be continuing at increasing rates that can only bring increased pressure to address special education issues. By the start of the 1998-99 school year, there will be over 1,000 charter schools in operation. The movement is expanding in other ways as well with the addition of resource organizations that have been founded to assist charter schools in filing applications, pursuing funding opportunities, and solving operational problems.[8]

The obligation of charter schools to conform to all special educational laws and regulations has significant implications not only for procedural matters pertaining to students with disabilities, but also for many other aspects of a charter school's operation. For example, the requirements to provide instruction in the least restrictive environment and access to the general education curriculum for students with disabilities can affect staffing patterns and the delivery of instruction throughout a school. Therefore, solutions for the problems already identified, including the elimination of any confusion and conflicts among sets of requirements, should be shared with states and charter school operators in order to help charter schools be a successful component of the American public education system.

---

[8]A national association of these organizations, known as the Charter Friends National Network, has a website (http://www.charterfriends.org) that lists individuals, groups and organizations that are active in the field.

REFERENCES

Ahearn, E. M. (1998). *Report of the 1997 National Monitoring Conference.* Alexandria, VA: National Association of State Directors of Special Education.

Charter schools and special ed law: An imperfect union. (1996, October 25). *The Special Educator, 12*, 7.

Fiore, T. (1998, September). *Review of charter school legislation provisions related to students with disabilities.* Washington, D.C.: U. S. Department of Education, Office of Educational Research and Improvement

Hehir, T. (1997, November). Special education workshop session: Edited transcript. United States Department of Education, Office of Special Education. Available online at: http://www.uscharterschools.org

Heubert, J. P. (1997). Schools without rules? Charter schools, federal disability law, and the paradoxes of deregulation. *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 32, pp. 301-353.

Klonsky, M. (1996, Spring). Are high school charters making the grade? *Cityschools, 2*(1). Published by the North Central Regional Education Lab.

Lange, C. M. (1997). *Charter schools and special education: A handbook.* Alexandria, VA: National Association of State Directors of Special Education.

National Conference of State Legislatures (1998). Charter school legislative summary:1998. Available online at: http://www.ncsl.org/programs/educ/c1schls.htm#update.

Office of Civil Rights, United States Department of Education (1997). *Questions and Answers on the Application of Federal Civil Rights Laws to Public Charter Schools.* Available online at: http://www.uscharterschools.org/res_dir/res_primary/ocr_q&a.htm.

RPP International and the University of Minnesota (1997). *A study of charter schools: First year report 1997.* Washington, D.C.: U. S. Department of Education, Office of Educational Research and Improvement.

Schnaiberg, L. (1997, February 19). Special ed rules pose problems for charter schools. pp. 1,24; and Charter school laws are all over the map on disabled students, p. 25, *Education Week.*

United States General Accounting Office (1997, Sept. 16). *Charter schools: Issues affecting access to federal funds.* #GAO/T-HEHS-97-216.

United States General Accounting Office (1998, April). *Charter schools: Federal funding available but barriers exist.* #GAO/HEHS-98-84.

Appendix A: Summary of State Charter Schools Regulations

Description of State Charter School Regulations as of 8/1/98

Arkansas: The listed purpose of this brief rules document is to provide guidelines, outline procedures, and describe the requirements which schools must include in their petition to become a charter school. The sections include definitions, the petition and approval process, and the terms of a charter. (Arkansas is one of the nine states with charter school laws but no operating charter schools.)

Georgia: The set of rules implementing Georgia's charter school law is also very brief. There are two pages of provisions and a two-page "model charter" that may be modified. The specific requirements cover the content and procedure for submission of a petition, charter renewal, and the role of the Georgia Department of Education—to develop program guidelines and criteria for charter schools and petitions, and to provide technical assistance.

Illinois: The Illinois administrative rules for charter schools also concentrate on the basic steps in acquiring and maintaining approval for a charter school: the petitioning and approval process, revision and renewal, and the appeal of local denials of charter applications. There is no reference to the creating or maintenance of a school.

Massachusetts: While the Massachusetts regulations similarly cover the basic points on procedures for the establishment of a charter school, they also include details on approval criteria for the awarding of charters, amendments, funding, ongoing review, renewal and charter revocation and probation. The regulations also provide for a complaint procedure for parents or other individuals or groups who believe that a charter school has violated any requirement.

New Jersey: The New Jersey charter school regulations are more detailed than other states. In addition to the procedural points about charters, they include specific definitions, requirements for reporting, student transportation, staff certification, and financial operations.

New Mexico: As in the other five states, the New Mexico regulations relating to charter schools focus almost entirely on procedures for authorization. There are also brief sections on budgets and accounting, and accountability.

Appendix B: State Policy Documents

State Policy Materials on Charter Schools and Students with Disabilities

State	*Policy Document(s) Reviewed*	*Comments/Other Sources of information*
Alabama	Not applicable	No charter school law
Alaska	*Questions and Answers About Charter Schools*	State website: <http://www.educ.state.ak.us/Alaskan_Schools/Charter/CharterFAQ.html>
Arizona	1) *Special Education Process: A Model for Charter Schools*; 2) *IDEA Consolidated Application FY 1998*	1) Detailed manual on special education including information for parents in English and Spanish. 2) Instructions and all required forms for obtaining funding for students with disabilities from the state under IDEA Part B. State website: <http://www.ade.state.az.us:80/charter>
Arkansas	*Arkansas Department of Education Rules and Regulations: Charter Schools*	There are currently no operating charter schools in Arkansas.
California	CA Department of Education Charter Schools Information Packet	State website: <http://www.cde.ca.gov> contains other information including a draft advisory for comment on special education and charter schools.
Colorado	*Rules for the Administration of the Exceptional Children's Education Act*	Rules amended in Sept. 1997 to conform to statutory requirements for Charter Schools and Schools of Choice. State website: <http://www.cde.state.co.us/charter.htm>
Connecticut	*Frequently Asked Questions Concerning Charter Schools and Special Education*	State website: <http://www.state.ct.us/sde/charter.htm>
Delaware	*Delaware Charter School Guidebook: Programs for Exceptional Children* (October 1997)	State website: <http://www.doe.state.de.us/del_schools/charter_schools.htm>
District of Columbia	*District of Columbia Board of Education Public Charter School Application*	Policy being developed for fall 1998.
Florida	*Charter Schools Information Sheets: Meeting the Needs of Students with Disabilities*	State website: <http://www.firn.edu/doe/bin00038/home0038.htm>
Georgia	*State Board of Education Rule*, Section 160-4-9-.04 (Charter Schools)	State website: <http://www.doe.k12.ga.us/charterschools/charterschools.html>

State	*Policy Document(s) Reviewed*	*Comments/Other Sources of information*
Hawaii	No written policies for students with disabilities in charter schools.	State website: <http://www.doe.hawaii.edu/~lanikai/charter_info.html>
Idaho	No written policies for students with disabilities in charter schools. (Law passed April 1998)	State website: <http://www.sde.state.id.us/WhatsNew/Item353/?Template=ShowOne>
Illinois	*Charter School Rules* Title 23, Subtitle A, Chapter I, Subchapter O, Part 650	State website:<http://www.isbe.state.il.us/policy-manage/Divisions/CHARTER/illinois_charter_schools.htm>
Indiana	Not applicable	No charter school law
Iowa	Not applicable	No charter school law
Kansas	No written policies for students with disabilities in charter schools.	
Kentucky	Not applicable	No charter school law
Louisiana	*Louisiana Charter Schools Demonstration Project Grant Application Packet*	*Louisiana Charter Schools Handbook*, Public Affairs Research Council of Louisiana
Maine	Not applicable	No charter school law
Maryland	*Report of the Public Charter School Study Group to the Maryland Board of Education*, Jan.28,1997; *Guidelines for Use by Local School Systems in Considering Charter School Applications*, July 1997.	There is no charter school law in Maryland. *House Bill 999* that was passed Apr. 6, 1998 established a task force to study the topic.
Massachusetts	*Regulations on Charter Schools*, 603 CMR 1.00 *Massachusetts Application for a Public Charter School 1997-98*	*The Massachusetts Charter School Handbook*, 3rd Edition, Charter Resource Center, Pioneer Institute for Public Policy State website: <http://www.doe.mass.edu/cs.www/>
Michigan	*Michigan Public School Academies - Q and A*	*For Our Children*, Michigan Association of Public School Academies, <http://www.charterschools.org/core/html>
Minnesota	No written policies for students with disabilities in charter schools.	

State	*Policy Document(s) Reviewed*	*Comments/Other Sources of information*
Mississippi	No written policies for students with disabilities in charter schools.	
Missouri	No written policies for students with disabilities in charter schools.	Recently passed charter school law applies only to St. Louis and Kansas City.
Montana	Not applicable	No charter school law
Nebraska	Not applicable	No charter school law
Nevada	No written policies for students with disabilities in charter schools.	
New Hampshire	No written policies for students with disabilities in charter schools.	
New Jersey	*Charter Schools 1997 Application* *New Jersey Administrative Code for Charter Schools*, Chapter 6A:11	Amendments to *Administrative Code* pending State website: <http://www.state.nj.us/njded/chartsch/apexc.htm>
New Mexico	*SBE Regulation No. 94-1 Relating to Charter Schools*	Charter Schools Accreditation Reports 1997
New York	Not applicable	No charter school law
North Carolina	*Application Packet for Charter Schools 1998-99 School Year* *Charter "Public" Schools in North Carolina: Questions and Answers*	State website: <http://www.dpi.state.nc.us/charter_schools/maincharter.html>
North Dakota	Not applicable	No charter school law
Ohio	*Resource Guide: Community Schools in Ohio*	Charter schools are called community schools in Ohio.
Oklahoma	Not applicable	No charter school law
Oregon	Not applicable	No charter school law, but Oregon has received federal charter school funds since 1995 through provisions of its school reform law that allows groups of parents, teachers, and/or administrators to implement innovative programs with waivers of some state regulations. (See Northwest Regional Lab website: <http://www.nwrel.org/charter/oregon.htm>

State	***Policy Document(s) Reviewed***	***Comments/Other Sources of information***
Pennsylvania	*Basic Education Circular: Charter Schools* *Preliminary Guidance for Charter Schools Regarding Special Education* *Charter Schools and Special Education Questions and Answers*	Proposed Regulations Chap. 703: Charter School Services and Programs for Children with Disabilities (not official - for discussion purposes only) State website: <http://www.cas.psu.edu/docs/pde/charse.html>
Puerto Rico	No written policies for students with disabilities in charter schools.	
Rhode Island	No written policies for students with disabilities in charter schools.	
South Carolina	No written policies for students with disabilities in charter schools.	
South Dakota	Not applicable	No charter school law
Tennessee	Not applicable	No charter school law
Texas	*Open Enrollment Charter Guidelines and Application* *Special Education* {Information for Charter Schools)	
Utah	No written policies for students with disabilities in charter schools.	
Vermont	Not applicable	No charter school law
Virginia	No written policies for students with disabilities in charter schools.	
Washington	Not applicable	No charter school law
West Virginia	Not applicable	No charter school law
Wisconsin	No written policies for students with disabilities in charter schools.	State website: <http://www.dpi.state.wi.us/dpi/dlsis/edop/charter.html>
Wyoming	No written policies for students with disabilities in charter schools.	

Appendix C: Excerpts from IDEA

Individuals With Disabilities Education Act (IDEA)

Specific References to Charter Schools in IDEA Text

SECTION 611: AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS

§611(f): (4) (A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY-BUILDING AND IMPROVEMENT- In any fiscal year in which the percentage increase in the State's allocation under this section exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

(i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

SECTION 612: STATE ELIGIBILITY

§612(a): (21) STATE ADVISORY PANEL-

(A) IN GENERAL- The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) MEMBERSHIP- Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including --

(i) parents of children with disabilities;

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials;

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(x) representatives from the State juvenile and adult corrections agencies.

SEC. 613: LOCAL EDUCATIONAL AGENCY ELIGIBILITY

§613(a):(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS- In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency --

(A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.

ADDITIONAL SECTIONS RELEVANT TO CHARTER SCHOOLS THAT ARE LEAs

SEC. 602: DEFINITIONS

§602: (15) LOCAL EDUCATIONAL AGENCY-

(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function

for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes --

(i) an educational service agency, as defined in paragraph (4); and

(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

SECTION 611: AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS

§611 (g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES-

(1) SUBGRANTS REQUIRED- Each State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.

SEC. 613: LOCAL EDUCATIONAL AGENCY ELIGIBILITY

§613 (e) JOINT ESTABLISHMENT OF ELIGIBILITY-

(1) JOINT ESTABLISHMENT-

(A) IN GENERAL- A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(B) CHARTER SCHOOL EXCEPTION- A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute.

SUBPART 2: COORDINATED RESEARCH, PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

SEC. 661: ADMINISTRATIVE PROVISIONS

§661: (b) ELIGIBLE APPLICANTS-

(1) IN GENERAL- Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

(A) A State educational agency.

(B) A local educational agency.

(C) An institution of higher education.

(D) Any other public agency.

(E) A private nonprofit organization.

(F) An outlying area.

(G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

(H) A for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.